



Texas Department of Health

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August 9, 1993 Opinion Committee

The Honorable Dan Morales
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Attention: Opinion Committee

Dear General Morales:

MBJ RD-00611-DM
FILE # AL-21791-93
I.D.# 21791-22611

RD-611

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The Texas Department of Health certifies and regulates medical radiologic technologists pursuant to the Medical Radiologic Technologist Certification Act, V.T.C.S., Article 4512m. An issue has arisen as to whether the department may revise its rules relating to the types of certificates issued under the Act.

At this time, the department issues a general certification which allows the certificate holder to perform any and all radiologic procedures and limited certifications in seven areas. Limited certification as defined in the Act authorizes radiologic procedures to specific parts of the human body.

Medical radiologic technology is considered to cover three disciplines: diagnostic radiography, nuclear medicine, and radiation therapy. The general certification currently issued by the department allows the certificate holder to practice in any of these three areas. The Medical Radiologic Technologist Advisory Board wishes to recommend rules to the Texas Board of Health to establish a separate general certificate for each of the three disciplines or a single general certificate with three separate specialty designations. Qualifications for each specialty would include education, experience, or both. An individual would not be able to perform radiologic procedures in any discipline unless he or she held a general certification that covered that specific discipline. The advisory board wishes to establish this certification scheme because of its concern over the lack of training or education individuals may have. Generally, individuals are trained or educated in one, but not all, of the disciplines. However, the general certification allows an individual educated in one area to practice in all three areas. The issue is whether the department by rule may establish this certification scheme. It is my position that such a certification scheme must be established through legislative changes, rather than rule changes. This opinion request will present arguments for both positions.

The Act became effective on September 1, 1987. Certification was required as of January 1, 1989. Since the inception of the certification program, the department has only issued one type of general certification which allows the individual to practice any and all radiologic procedures.

Argument Against Specialty Certificates

If the rules were to be changed to require an individual to hold a certification in a specialty area in order to work in a specific discipline, hundreds or thousands of persons might lose their jobs. At this time there are approximately 12,000 general certificate holders. Many of them are trained or educated in one discipline, not all three disciplines. If a specialty certificate were required, persons with no formal training or education in the discipline in which they are currently working would not be able to continue to work in that area but would be forced to obtain further education or training and another certificate in the appropriate discipline. Such a drastic change in the interpretation of the scope of practice currently allowed under a general certificate would wreak havoc in the profession and among the current certificate holders and their employers.

In addition, the legislature has generally expressly stated in a licensing statute when the legislature wishes to allow or require specialty designations or specialty certificates. For examples see the Licensed Professional Counselor Act, V.T.C.S., Article 4512g, Section 13 (now repealed by H.B. 2741 passed in 1993) and the Texas Medical Physics Practice Act, V.T.C.S., Article 4512, Section 13. Since the legislature did not specify specialties in the MRT Act, one may conclude that the legislature did not intend to require specialties under the MRT Act, other than the limited certification.

Another argument is that establishing required specialty certificates would in effect be setting up new categories of limited certifications which would not meet the definition of "limited certification" in Section 2.03 of the Act.

In addition, the holding of a general certification is only evidence that a person is minimally qualified to perform radiologic procedures and employers should have the continuing responsibility to ensure that each individual employee is appropriately trained or educated to perform the tasks to be assigned to that employee.

Enforcement of required specialty certificates in the three disciplines would be very difficult. It may be quite difficult to clearly define the boundaries of the scope of practice in each discipline and to address individuals that practice in more than one discipline.

Arguments for Specialty Designations

At the first advisory board meeting in September 1987, the board discussed the possibility of establishing three required specialty certificates in the initial rules but on a split vote, the board decided not to make that recommendation to the Texas Board of Health. Apparently, the advisory board was told by legal counsel at that meeting that it could recommend specialty certificates at a later date.

The language in the Act is very broad in terms of the authority of the Texas Board of Health to adopt rules. Section 2.05(a)(1) states that the Texas Board of Health shall adopt rules establishing minimum standards for issuing certificates. Section 2.05(b) states that the Texas Board of Health "shall establish different classes of certificates to include all radiologic procedures used in the course and scope of the practice of practitioners licensed in this state.

The Honorable Dan Morales

Page 3

The Texas Board of Health may issue general and limited certificates and general and limited temporary certificates." Section 2.04(d) states that the advisory board recommends standards and "shall recognize existing standards that apply to the scope of practice for both general and limited certifications." This language is broad enough to give the Texas Board of Health authority to establish three classes of general certificates in the three disciplines which are now recognized as part of the broad term of "radiologic procedures."

If you have any questions regarding this opinion request, please contact Linda Wiegman, an attorney for the department, at (512)458-7236. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Smith" with a stylized flourish at the end.

David R. Smith, M.D.
Commissioner of Health